1889

ABRAHAM v. MAHTABO.

But the whole charge of immorality against the mother falls to the ground when it is found, as the Magistrate has found, that even if there was any legal defect in the marriage, this was unknown to the mother and Radhakissen, both of whom believed that a valid marriage had taken place.

With the religious aspect of the case we have, of course, nothing whatever to do. It matters not whether the case is one of a Hindu child leaving her parents and being received and detained against their will in a Christian institution in order that she may become Christian, or of a Christian child leaving her parents and being received and detained against their will in a Mahomedan institution in order that she may become a Mahomedan.

There are no circumstances which would justify us in ordering that the child should be made over to the petitioner, and the rule must, so far as it relates to this, be discharged.

H. T. H. *Rule made absolute in part.*

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

1889
March 18th.

HUKUM CHAND OSWAL (PLAINTIFF) *v.* TAHARUNNESSA BIBI AND OTHERS (DEFENDANTS).*

Civil Procedure Code, 1882, s. 257A—Agreement for, or to give, time for satisfaction of judgment-debt—Agreement without sanction of Court—Illegal contract—Contract Act (IX of 1872), s. 23—Consideration.

The plaintiff obtained a decree against the defendant under which the judgment-debtor was liable to pay the amount by instalments with interest at 4 per cent. Eventually, the defendant failing to pay, the plaintiff accepted a bond executed jointly by the defendant and *T* his father, by which they both became liable for the amount of the decree with interest at 18¾ per cent. In a suit on the bond, it was contended that the bond was void under s. 257A of the Civil Procedure Code, as being an agreement to give time for the satisfaction of the judgment-debt made for no consideration and without the sanction of the Court, and also without such sanction providing

* Appeal from Appellate Decree, No. 2510 of 1887, against the decree of J. R. Hallet, Esq., Judge of Rungpore, dated the 1st of September 1887, affirming the decree of G. Dalton, Esq., Subordinate Judge of Julpaigoorce, dated the 11th of February 1887.

1889

HUKUM CHAND OSWAL v. TAHARUN-NESSA BIBI.

for payment of a sum in excess of the amount due under the decree; that it was void within the meaning of s. 23 of the Contract Act as being forbidden by, or of a nature to defeat the provisions of, s. 257A of the Civil Procedure Code; and that, consequently, the suit on it was not maintainable.

Held, that s. 257A of the Code was not applicable. That section was framed to prohibit the enforcement of an agreement of the kind mentioned therein, if made without the sanction of the Court, *in execution of the decree*, but was not intended to take away the right of parties, of entering into a fresh contract, either for payment of the judgment-debt, to give time for such payment, or for the payment of a larger sum than may be covered by the decree, if it be for a proper consideration. In this case the consideration for the bond was a lawful consideration: it could not be said that, because satisfaction of the decree was not certified to the Court, there was no consideration.

Held, also, the bond was not void under s. 23 of the Contract Act. *Semble*: The words "any law" in that section refer to some *substantive* law, and not to an adjective law, such as the Procedure Code is.

THE plaintiff obtained a decree against defendant No. 1, as widow of one Munshi Darwar Buksh, and, under that decree, the judgment-debtor was liable to pay the decretal amount by certain instalments specified in the decree, and interest was given by the decree at 4 per cent. per annum. She failed to pay, and the decree-holder then accepted a bond executed by Munshi Tarikulla, the father of the judgment-debtor, under which he became security for the ultimate payment of the amount of the decree. The decree was not satisfied, and in lieu of enforcing the bond against Munshi Tarikulla, the decree-holder eventually, on the 18th Bhadro 1289 (2nd September 1882), accepted a fresh bond executed by Munshi Tarikulla and his daughter, defendant No. 1, jointly, under which both became liable for the balance of the decree remaining unpaid and for interest at the rate of Rs. 1-9 per mensem or of Rs. 18-12 per cent. per annum. The defendants Nos. 2 to 10 were the other heirs of Tarikulla who was dead.

The main defence was that the bond of the 18th Bhadro 1289 was contrary to the provisions of s. 257A of the Civil Procedure Code, and that the suit to enforce it was not maintainable; and on this ground the suit was dismissed by both the lower Courts.

The plaintiff appealed to the High Court.

1889

HUKUM CHAND OSWAL v. TAHARUN-NESSA BIBI.

Baboo *Rash Behari Ghose* and Baboo *Bhubun Mohun Dass* for the appellant.

Baboo *Mohesh Chunder Chowdhry* and Munshi *Seraj-ul-Islam* for the respondents.

The judgment of the Court (PRINSEP and GHOSE, JJ.) was as follows :—

A decree was obtained by the plaintiff against the defendant No. 1, as the legal representative of one Darwar Buksh, in respect of a certain sum of money. The decree provided that the amount was payable in instalments with interest at a certain rate. The defendant No. 1, however, failed to pay in accordance with the terms of the decree; and the plaintiff thereupon accepted a bond executed by the father of defendant No. 1, *viz.*, Tarikulla, as surety for the debt. But nothing apparently came out of this transaction, and eventually a bond was executed on the 18th Bhadro 1289, both by defendant No. 1 and Tarikulla, making themselves jointly liable for the balance of the decretal money with interest at Rs. 18-12 per cent. per annum. The original decree is not forthcoming, but there does not seem to have been any dispute between the parties in the lower Courts as regards its terms, excepting however in one particular, *viz.*, as to the rate of interest decreed. The Lower Appellate Court, upon the evidence, has found that the interest payable under the decree was Rs. 4 per cent. per annum, whereas that covenanted to be paid under the bond of the 18th Bhadro 1289 was, as already mentioned, Rs. 18-12.

The present suit is brought upon the bond of the 18th Bhadro 1289 both against defendant No. 1 and the heirs of Tarikulla, he having in the meantime died.

The suit has been dismissed by both the Courts below, upon the ground that under s. 257A of the Code of Civil Procedure the agreement entered into by the bond, providing for the payment of a larger interest than that payable under the decree, is void, the bond having been executed without the sanction of the Court which passed the decree.

We think that the lower Courts have not taken a right view of the law. It seems to us that it is only in the event of an application

being made to enforce the agreement entered into between the parties under the bond, in the course of the *execution of the decree*, that an objection like that now raised, could have been successfully made. Section 257A finds its place in the Procedure Code in the Chapter headed "Of the execution of decrees" under division E "Of the mode of executing decrees," and there can, therefore, be no reasonable doubt that what the Legislature had in view in framing that section was simply to prohibit the enforcement of an agreement of the kind mentioned therein, if made without the sanction of the Court, in execution of the decree; but it could never have been intended to take away a right which parties certainly possess of entering into a fresh contract, either for the payment of the judgment-debt, to give time for such payment, or for the payment of a larger sum than what may be covered by the decree, if it be for a proper consideration. In the present case the creditor agreed to give to the debtor more time for the payment of the decretal money than what the decree actually allowed; and the larger rate of interest agreed to be paid was evidently the consideration for the giving of such time. This consideration was certainly lawful and there can, therefore, be no valid objection to the agreement being enforced.

It was however contended, on the part of the respondent, that, under s. 23 of the Contract Act, the consideration for the agreement was not lawful, because it was forbidden by law, or was of such a nature that, if permitted, it would defeat the provisions of s. 257A of the Code of Civil Procedure. We are unable to accept this contention. In the first place, we are not aware of any law by which such a consideration, as there was for the bond in this case, is forbidden; and, in the second place, we do not think that "if permitted" it would defeat the provisions of s. 257A. The words "any law" as mentioned in s. 23 of the Contract Act, we are inclined to think, refer to some *substantive* law, and not to an adjective law such as the Procedure Code is. But whether this is so or not, we fail to see how the object, with which s. 257A was framed, would be defeated, if the contract in question were enforced, that object being, as it seems to us, simply to avoid the inconvenience

1889

HUKUM CHAND OSWAL v. TAHARUN-NESSA BIBI.

and delay which would arise if parties were allowed to bring, before the Court executing a decree, matters not covered by it and which had not become part of the decree itself by express sanction of the Court.

It was further contended on behalf of the respondent that, inasmuch as the satisfaction of the decree was not certified to the Court, there was no consideration for the bond, and it would still be open to the decree-holder to enforce the decree. There is nothing on the record showing whether satisfaction of the decree was certified or not; but assuming that it was not, we do not think that it can be rightly said that there was no consideration for the contract; and it seems to us that if, notwithstanding the acceptance of the bond by the creditor in lieu of the decree, he enforces the decree, there is a remedy in the hands of the debtor to recover back from the creditor the money realized in execution of the decree with such damages as he might have sustained by reason of the wrongful act of the creditor.

The view that we take of this case is supported by the cases *of Jhabar Mahomed* v. *Modan Sonahar* (1), *Sellamayyan* v. *Muthan*, (2), *Ramghulam* v. *Janki Rai* (3), and *Gunamani Dasi* v. *Prankishori Dasi* (4), and we may say that we are not prepared to follow the view which the Bombay High Court has laid down on the subject.*

We accordingly are of opinion that the suit will lie, and that, therefore, it must be returned to the Court of first instance to be tried on the merits. The plaintiff is entitled to his costs in this Court and the Lower Appellate Court, and he is entitled also to a refund of the stamp-fee on the petitions of appeal to this Court and to the District Judge.

J. V. W. *Appeal allowed.*

* See *Pandurang Ramchandra Chowghule* v. *Narayan*, I. L. R., 8 Bom. 300; *Ganesh Shivram* v. *Abdullabeg*, I. L. R., 8 Bom., 538; *Davlat Sing* v. *Pandu*, I. L. R., 9 Bom., 176; and *Vishnu Vishwanath* v. *Hur Patel*, I. L. R., 12 Bom., 499.

(1) I. L. R., 11 Calc., 671.
(2) I. L. R. 12 Mad., 61.
(3) I. L. R., 7 All., 124.
(4) 5 B. L. R., 223.

Before Mr. Justice Prinsep and Mr. Justice Wilson.

TOPA BIBI (DEFENDANT) *v.* ASHANULLA SARDAR (PLAINTIFF).* 1889 *March* 15.

Registration Act (III of 1877), s. 77—Suit to compel registration of document not compulsorily registrable.

Under the Registration Act of 1877, a suit lies by a purchaser to compel registration of his kobala in a case in which the value of the property conveyed is under Rs. 100, and in which, therefore, the registration of the deed is not compulsory.

THIS was a suit brought under s. 77 of the Registration Act to compel registration of a kobala or deed of sale alleged to have been executed by the defendant in favour of the plaintiff. The defendant denied execution and the Registrar consequently refused to register the deed. The only question material to this report was, whether or not the suit would lie. The Munsiff came to the conclusion that the defendant had not executed the kobala, and therefore dismissed the suit. This decision, however, was reversed by the Judge, who gave the plaintiff a decree for the registration of the deed.

The defendant appealed to the High Court.

Baboo *Debendra Mohun Sen*, for the appellant, contended that the suit would not lie and cited an *Anonymous case* (1) and *Ahsuna* v. *Begum Kheerun Singh* (2).

Baboo *Mukunda Nath Roy*, for the respondent, contended that such a suit would lie, and referred to ss. 17, 18, 50 and 77 of the Registration Act, 1877, and para. 3 of s. 54 and cl. (*d*) of s. 55 of the Transfer of Property Act.

The judgment of the Court (PRINSEP and WILSON, JJ.) was delivered by—

WILSON, J.—The only question argued before us, and the only one properly open upon second appeal, is, whether a suit will lie on the part of a purchaser to compel registration of his kobala in a

* Appeal from Appellate Decree No. 517 of 1888, against the decree of J. R. Hallet, Esq., Judge of Rungpore, dated the 3rd of December 1887, reversing the decree of Baboo Gopal Chander Banerjee, Munsiff of Gaibandah, dated the 14th of February 1887.

(1) 6 Mad. H. C. Ap., 9. (2) 10 W. R., 360.

1889

TOPA BIBI v. ASHANULLA SARDAR.

case in which the value of the property conveyed is under one hundred rupees, and registration is therefore not made compulsory by the Registration Act.

We think it clear that under the present Registration Act III of 1877 the suit lies. Section 17 of the Act says "that certain documents shall be registered." Section 16 says "that certain other documents may be registered." Section 32 says that "every document to be registered . . . . . whether such registration be compulsory or optional, shall be presented . . . . . by some person executing or claiming under the same." The effect seems to be that any person therein described may exercise the option given by s. 18. The following sections lay down rules as to whose presence is ordinarily necessary to justify registration. And ss. 36 to 39 provide for compelling the attendance of such persons as well as of witnesses. Part XII of the Act, dealing with the mode of refusal to register and its consequences, with appeals against such refusal, and in the last resort a suit in a Civil Court, is perfectly general in its terms.

Two cases were cited as authorities for a contrary view *Ahsuna Begum* v. *Kheerun Singh* (1) and an *Anonymous case* (2) from the Madras High Court Reports. As to those cases it is enough to say that the Judges had in them to deal with a different Act from that now before us, and especially different in this, that it did not expressly give a right of suit as the present Act does. Under the present Act we entertain no doubt that the suit lies. Any other conclusion would lead to very grave consequences; for since the passing of the Transfer of Property Act the omission to register documents of the kinds mentioned in s. 18 of the Registration Act may lead to much more serious results than before. The appeal is dismissed with costs.

Appeal dismissed.

(1) 10 W. R., 360. (2) 6 Mad. H. C. Ap., 9.

Before Mr. Justice Prinsep and Mr. Justice Wilson.

KRISTO GOBIND MAJUMDAR (JUDGMENT-DEBTOR) *v.* HEM CHUNDER CHOWDHRY (DECREE-HOLDER).

KRISHNA GOPAL MAJUMDAR (JUDGMENT-DEBTOR) *v.* HEM CHUNDER CHOWDHRY (DECREE-HOLDER).* 1889 *March* 19.

Execution of decree—Personal decree against person having life interest—Decree for arrears of rent—Hindu law.

A decree for arrears of rent was obtained by *H* against *B*, a daughter in possession for a life estate of property inherited from her father *R*. On the death of *B*, this property was taken by her two sons as heirs of her father *R*. The decree was for arrears which had accrued during the lifetime of *B*, and the sons had been substituted for *B* as judgment-debtors.

On an application for execution of the decree: *Held*, on the principle laid down in *Baijun Doobey* v. *Brij Bhookun Lall Awusti* (1), that the debt was a personal debt, payment of which could be enforced only against the property left by *B*. The decree, therefore, could not be executed against the property inherited by the sons from *R*.

Hurry Mohun Rai v. *Gonesh Chunder Doss* (2) distinguished.

IN these cases Hem Chunder Chowdhry had obtained a decree for arrears of rent against (among others) one Brojosundari Dassia, the daughter and heiress of one Rama Kanto Majumdar. Brojosundari having died, her two sons, Krishna Gopal Majumdar and Kristo Gobind Majumdar, succeeded to the property of Rama Kanto, their maternal grandfather, in which Brojosundari, their mother, had had a life interest, and were substituted as judgment-debtors in place of Brojosundari. In execution of his decree, Hem Chunder applied for attachment and sale of a taluk other than that in respect of which the arrears had accrued. Krishna Gopal and Kristo Gobind objected to the sale of a four-anna share of the taluk, being the portion to which they had succeeded as heir of Rama Kanto.

It was found by both the lower Courts, that the arrears of rent in respect of which the decree was obtained against Brojosundari,

* Appeals from Orders Nos. 415 and 421 of 1888, against the orders of H. Peterson, Esq., Judge of Mymensingh, dated the 26th of July 1888, reversing the orders of Baboo Koruna Moy Banerjee, Subordinate Judge of Mymensingh, dated the 10th of April 1888.

(1) L. R., 2 I. A., 275; I. L. R., 1 Calc., 133.

(2) I. L. R., 10 Calc., 823.

1889

KRISTO GOBIND MOJUMDAR v. HEM CHUNDER CHOWDHRY.

had accrued during her lifetime. The Subordinate Judge held that the four-anna share was not liable to be sold.

On appeal however the Judge, relying on the Full Bench case of *Hurry Mohun Rai* v. *Gonesh Chunder Doss* (1), held that the portion of the taluk held by Krishna Gopal and Kristo Gobind was liable to be sold in execution of the decree.

From this decision Krishna Gopal and Kristo Gobind brought separate appeals to the High Court.

Baboo *Mukunda Nath Roy* and Baboo *Jadub Chunder Seal* for the appellants.

Baboo *Mohini Mohun Roy* and Baboo *Jogesh Chunder Roy* for the respondent.

Baboo *Mukunda Nath Roy* for the appellants.—The decree against Brejosundari was a personal decree against her. The reversioners were not parties to the suit in which the decree was obtained. The debt was purely a personal debt of their mother, and a purely personal decree was obtained. The cases of *Kristo Moyi Dossee* v. *Prasanna Narayan Chowdhry* (2), *Mohima Chunder Roy Chowdhry* v. *Ram Kishor Acharj Chowdhry* (3), *Nogendro Chunder Ghose* v. *Kaminee Dossee* (4), and *Baijun Doobey* v. *Brij Bhookun Lall Awusti* (5) were cited.

The Full Bench case of *Hurry Mohun Rai* v. *Gonesh Chunder Doss* (1) is not applicable to the present case.

Baboo *Mohini Mohun Roy*, for the respondent, contended that the property of the reversioners was liable to be sold in execution of the decree, and cited *Teluck Chunder Chuckerbutty* v. *Muddon Mohun Joogee* (6) and *Anund Moyee Dassee* v. *Mohendro Narain Dass* (7).

(1) I. L. R., 10 Calc., 823.
(2) 6 W. R., 304.
(3) 15 B. L. R., 142, note; 23 W. R., 174.
(4) 11 Moore's I. A., 241.
(5) L. R., 2 I. A., 275; I. L. R., 1 Calc, 133.
(6) 15 B. L. R., 143, note; 12 W. R., 504.
(7) 15 W. R., 264.

1889

KRISTO GOBIND MOJUMDAR v. HEM CHUNDER CHOWDHRY.

The judgment of the Court (PRINSEP and WILSON, JJ. was) as follows:—

Decrees for arrears of rent were obtained against Brojosundari, a Hindu widow, which are now put into execution after her death against properties forming her father's estate in which she had only a life interest. The question raised on these appeals is, whether they are decrees merely against her personally, and, therefore, to be satisfied out of whatever she left at her death, or whether the estate which has passed to the next heirs, is liable.

We are of opinion that the principle laid down by their Lordships of the Privy Council in the case of *Baijun Doobey* v. *Brij Bhookun Lall Awusti* (1) should be adopted, and that the debt cannot be regarded as other than a personal debt, payment of which can be enforced only against the property left by the widow. The case decided by the Full Bench of this Court—*Hurry Mohun Rai* v. *Gonesh Chunder Doss* (2)—is not in point, as the debt of the Hindu widow was contracted under different circumstances, such as were held by the majority of the Judges to bind the ancestral estate. We accordingly set aside the order of the lower Courts with costs.

Appeals allowed.

J. V. W.

CRIMINAL MOTION.

Before Mr. Justice Mitter and Mr. Justice Macpherson.

ABHAYESSARI DEBI (PETITIONER) *v.* SHIDHESSARI DEBI (OPPOSITE PARTY).*

1889 *March* 13.

Criminal Procedure Code Act X of 1882, s. 145—*Dispute as to right to collect rents—Tangible immoveable property.*

A dispute as to the right to collect rents is a dispute concerning tangible immoveable property within the meaning of s. 145 of the Criminal Procedure Code, and the operation of that section cannot be limited by any rule which would depend upon the area of the property in dispute.

* Criminal Motion No. 19 of 1889, against the order passed by G. Godfrey, Esq., Deputy Commissioner of Goalpara, dated the 29th of December 1888.

(1) L. R., 2 I. A., 275; I. L. R., 1 Calc., 133.
(2) I. L. R., 10 Calc., 823.